

UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

United States v. Kalolo Nathaniel Iu

United States v. Kalolo Nathaniel Iu, 917 F.3d 1026 (8th Cir. 2019) · No. No. 17-3237 · Decided March 6, 2019

SUMMARY

Eighth Circuit affirmed sexual abuse and attempted witness tampering convictions. Sufficient evidence supported sexual abuse conviction where victim testified she feared further physical abuse and defendant knew of her fear, distinguishing **United States v. Fool Bear**. Prior consistent statements were properly admitted under Fed. R. Evid. 801(d)(1)(B) to rebut fabrication claim. No fatal variance occurred where post-indictment communications were introduced as consciousness of guilt, not substantive evidence of the charged offense.

CASE DETAILS

COURT	United States Court of Appeals for the Eighth Circuit
WRITING FOR THE COURT	Shepherd; Kelly; Stras
JURISDICTION	Federal
DECIDED	March 6, 2019
DOCKET	No. 17-3237
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from conviction after jury trial in the United States District Court for the District of North Dakota
STANDARD OF REVIEW	Sufficiency of the evidence: de novo, viewing evidence in light most favorable to the government. Evidentiary rulings: abuse of discretion, harmless error; plain error for unobjected-to statements. Variance: de novo.
PRECEDENTIAL VALUE	Published
PARTIES	Kalolo Nathaniel Iu v. United States of America

TOPICS

criminal procedure

evidence

hearsay

standard of review

appellate procedure

PRACTICE AREAS

Criminal Law

QUESTIONS PRESENTED

1. Whether sufficient evidence supported the sexual abuse conviction under 18 U.S.C. § 2242(1).
2. Whether sufficient evidence supported the attempted witness tampering conviction under 18 U.S.C. § 1512(b)(1).
3. Whether the district court erred in admitting hearsay testimony (prior consistent statements) from an FBI Special Agent, a responding officer, and a third party.
4. Whether a fatal variance occurred between the indictment and the evidence at trial regarding the witness tampering charge.

HOLDINGS

1. The evidence was sufficient to support the conviction because the jury could infer that Iu knowingly placed Bad Hand in fear of further physical abuse, causing her to engage in a sexual act.
2. The evidence was sufficient to support the conviction because the jury could infer that Iu knowingly attempted to persuade Bad Hand to lie to investigators, not merely to tell the truth.
3. The district court did not abuse its discretion in admitting the FBI Special Agent's testimony of Bad Hand's prior consistent statement because it was admissible under Fed. R. Evid. 801(d)(1)(B) to rebut the defense theory of recent fabrication.
4. No variance warranting reversal occurred because the later communications were not offered as substantive evidence of guilt but as evidence of consciousness of guilt, and the indictment fully apprised Iu of the charges.

KEY QUOTATIONS

“The jury heard significant evidence from which it could make permissible inferences that Iu's behavior was aimed at frightening Bad Hand to the point that she acquiesced to sexual activity with him.” (at 5-6)

“The jury heard sufficient evidence from which it could conclude, beyond a reasonable doubt, that Iu knowingly attempted to persuade Bad Hand to lie to investigators about the assault.” (at 8)

“The district court did not abuse its discretion in allowing the challenged testimony; it was admissible under Fed. R. Evid. 801(d)(1) as a prior consistent statement offered specifically to rebut the defense theory that Bad Hand had fabricated her claim of sexual abuse.” (at 10-11)

FACTUAL BACKGROUND

Iu and his girlfriend Brittany Bad Hand got into a physical altercation on November 20, 2016, during which Iu punched, spit on, and kicked Bad Hand, and took her to his mother's grave and told her he had a burial plot picked out for her. The next morning, after the children left, Iu climbed on top of Bad Hand in bed, tried to remove her underwear, and after she resisted, said that Bad Hand let 'everybody else hit it' but says no to him. Bad Hand then stopped resisting and Iu had sex with her. Bad Hand immediately contacted authorities and underwent a sexual assault exam documenting injuries. Iu was arrested and later, while handcuffed in a patrol car, called Bad Hand and told her to drop the charges and lie. While in custody awaiting trial, Iu made additional recorded phone calls and wrote a letter attempting to persuade Bad Hand to recant.

PROCEDURAL HISTORY

Iu was convicted by a jury of one count of sexual abuse (18 U.S.C. §§ 2242(1), 1153) and one count of attempted witness tampering (18 U.S.C. § 1512(b)(1)). The district court denied his motions for judgment of acquittal and sentenced him to concurrent terms of 210 months and 120 months, plus 5 years supervised release. Iu appeals.

DISPOSITION

affirmed

CASES CITED

- United States v. Matthews, 761 F.3d 891 (8th Cir. 2014)
- United States v. Morris, 723 F.3d 934 (8th Cir. 2013)
- United States v. Wiest, 596 F.3d 906 (8th Cir. 2010)
- United States v. Ramos, 852 F.3d 747 (8th Cir. 2017)
- United States v. Bloom, 482 F.2d 1162 (8th Cir. 1973)
- United States v. Serrano-Lopez, 366 F.3d 628 (8th Cir. 2004)
- United States v. Fool Bear, 903 F.3d 704 (8th Cir. 2018)
- United States v. Betone, 636 F.3d 384 (8th Cir. 2011)
- United States v. Johns, 15 F.3d 740 (8th Cir. 1994)
- United States v. Craft, 478 F.3d 899 (8th Cir. 2007)
- Arthur Andersen LLP v. United States, 544 U.S. 696 (2005)
- United States v. White Bull, 646 F.3d 1082 (8th Cir. 2011)
- United States v. Cotton, 823 F.3d 430 (8th Cir. 2016)
- United States v. Fiorito, 640 F.3d 338 (8th Cir. 2011)
- United States v. Gavin, 583 F.3d 542 (8th Cir. 2009)
- United States v. Thomas, 791 F.3d 889 (8th Cir. 2015)
- United States v. Begnaud, 783 F.2d 144 (8th Cir. 1986)
- United States v. Stuckey, 220 F.3d 976 (8th Cir. 2000)
- United States v. Plenty Arrows, 946 F.2d 62 (8th Cir. 1991)
- United States v. Duke, 940 F.2d 1113 (8th Cir. 1991)
- United States v. Shyres, 898 F.2d 647 (8th Cir. 1990)

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